(2)

No. 91-2009

Supreme Court, U.S.
FILED
JUL 15 1992
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

Continental/Air Micronesia and
Continental Airlines, Inc.,

Petitioners,

v.

National Mediation Board,

Respondent.

BRIEF OF AIRLINE INDUSTRIAL RELATIONS CONFERENCE AS AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Robert J. DeLucia
Airline Industrial Relations
Conference
1920 N Street, N.W.
Washington, D.C. 20036
(202) 861-7552
For Amicus Curiae
The Airline Industrial
Relations Conference

July 15, 1992

TABLE OF CONTENTS

Page

Table Of Authorities ii

Interest Of The Amicus Curiae 1

Argument 6

Conclusion 12

TABLE OF AUTHORITIES

CASES — Page(s)

Air Canada v. NMB, 478 F. Supp. 615 (S.D.N.Y. 1979), *aff'd mem.*, 659 F.2d 1057 (2d Cir.), *cert. denied*, 454 U.S. 965 (1981) 10

Alitalia Airlines v. NMB, 753 F.2d 3 (2d Cir. 1985) 4

Burlington Northern R.R. v. BMWE, 481 U.S. 429 (1987) 4

Detroit & Toledo S.L. R.R. v. UTU, 396 U.S. 142 (1969) 4

General Comm. v. Missouri-K-T R.R., 320 U.S. 323 (1943) 2, 3

Hawaiian Airlines v. NMB, 107 L.R.R.M. (BNA) 3322 (D. Hawaii 1979), *aff'd mem.*, 659 F.2d 1088 (9th Cir.), *opinion replaced*, 109 L.R.R.M. (BNA) 2936 (9th Cir. 1981), *cert. denied*, 456 U.S. 929 (1982) 10

IAM v. Trans World Airlines, Inc., 839 F.2d 809 (D.C. Cir.), *cert. denied*, 488 U.S. 820 (1988) 9, 10

Japan Whaling Ass'n v. American Cetacean Society, 478 U.S. 221 (1986) 7

NLRB v. Financial Institution Employees Local 1182, 475 U.S. 192 (1986) 6

NLRB v. Katz, 369 U.S. 736 (1962) 4

Professional Cabin Crew Ass'n v. NMB, 872 F.2d 456 (D.C. Cir.), *cert. denied*, 493 U.S. 974 (1989) 9

Russell v. NMB, 714 F.2d 1332 (5th Cir. 1983), *cert. denied*, 467 U.S. 1204 (1984) 11

Switchmen's Union v. National Mediation Board, 320 U.S. 297 (1943) 6, 7, 12

Texas & N.O. Railroad v. BRAC, 281 U.S. 548 (1930) 2

Virginian Ry. v. System Federation No. 40, 300 U.S. 515 (1937) 8

USAir v. NMB, 711 F. Supp. 285 (E.D. Va.), *aff'd mem.*, 894 F.2d 403 (4th Cir 1989) 9

AGENCY ADJUDICATIONS

Air France, 6 N.M.B. 238, 6 N.M.B. 259 (1977) . . . 11

Altair Airlines, 7 N.M.B. 449 (1980) 11

Atcheson, Topeka & Santa Fe Ry., 8 N.M.B. 66, 8 N.M.B. 81 (1980), 8 N.M.B. 469 (1981) 11

Chicago Union Station Co., 8 N.M.B. 141 (1980) 11

Continental Airlines, Inc.,
8 N.M.B. Supp. A 709 (1977) 10

Denver & R.G.W. R.R., 12 N.M.B. 303 (1985) 11

Eastern Air Lines/Continental Airlines,
17 N.M.B. 432 (1990) 11

In re Chamber of Commerce, 14 N.M.B. 347 (1987) . 11

Manufacturers Ry., 7 N.M.B. 451,
7 N.M.B. 485 (1980) 11

North Central Airlines,
6 N.M.B. 612 (1978) 11

Ozark Air Lines, Inc., 6 N.M.B. 473 (1978) 10

Pennsylvania R.R., 2 N.M.B. 204 (1951) 11

Pocono Airlines, 9 N.M.B. 173 (1982) 10

Ross Aviation, 9 N.M.B. 162 (1982) 10

Texas International Airlines, 5 N.M.B. 196 (1976) . . . 11

Transamerica Airlines, 12 N.M.B. 204 (1985) 11

Transkentucky Transp. R.R., 9 N.M.B. 190 (1982) . . 11

USAir, 8 N.M.B. 131 (1980) 11

USAir, 17 N.M.B. 377 (1990) 11

STATUTES

29 U.S.C. § 159 (c) 3

Railway Labor Act, 45 U.S.C. § 151 et. seq. 2

45 U.S.C. § 152, Ninth 6, 7, 8

OTHER AUTHORITIES

Louis L. Jaffe, *The Right to Judicial Review II*, 71 Harv. L. Rev. 769 (1958) 7

Thomas P. Murphy, *Deunionization in the Airline and Railroad Industries: The Need for Legislative Reform*, 35 Fed. B. News & J. 142 (March/April 1988) 11

Herbert P. Northrop, *The Railway Labor Act--Time for Repeal?*, 13 Harv. J.L. & Pub. Pol'y 441 (1990) 11, 12

Martin Shapiro, *Administrative Discretion: The Next Stage*, 92 Yale L.J. 1487 (1983) 7

In The
Supreme Court of the United States
October Term, 1991

No. 91-2009

Continental/Air Micronesia and Continental Airlines, Inc.,

Petitioners,

v.

National Mediation Board,

Respondent.

Brief of
Airline Industrial Relations Conference
As Amicus Curiae In Support Of Petition
For A Writ Of Certiorari To The
United States Court Of Appeals
For The District of Columbia Circuit

INTEREST OF THE AMICUS CURIAE

Airline Industrial Relations Conference ("AIR Conference"), and its member air carriers,[1] are vitally

---

1 AIR Conference is an unincorporated voluntary association of United States scheduled air carriers formed to facilitate the exchange of ideas and information concerning personnel and labor relations matters, and to represent the member carriers in legislative, judicial and administrative matters. The members include ABX Air, Inc., Air Wisconsin, Alaska

(continued...)

concerned that whenever the National Mediation Board ("NMB" or "the Board") certifies a union, the certification reflects the voluntary choice of a majority of the employees in question. The premise of majority rule in representation cases is the "essential foundation"[2] of the bargaining scheme created by Congress under the Railway Labor Act, 45 U.S.C. § 151 et. seq. ("RLA" or "the Act"), and the "great right"[3] protected by the Act. This "great right" must be safeguarded from administrative nullification.

AIR Conference includes virtually every major air carrier in the United States. Not only does this industry employ over half a million people, with a total operating revenue of $76 billion in 1991, it also performs a vital function in the economy as a whole, transporting 452 million passengers over 447 billion miles in 1991. Congress recognized the indispensable contribution of the airlines in interstate commerce when, in 1936, it added airlines to the coverage of the RLA.

The lengthy and expensive procedures for dispute resolution under the RLA are designed to lead to the peaceful resolution of labor disputes and avoid interruptions to interstate commerce. These procedures unfairly bind the employees and the carrier if the union that is certified is not

---

1 (...continued)
Airlines, Inc., Aloha Airlines, Inc., America West Airlines, American Airlines, Inc., American Trans Air, Continental Airlines, Inc., Delta Air Lines, Inc., Federal Express Corp., Northwest Airlines, Inc., Reeve Aleutian Airways, Inc., Southwest Airlines, Tower Air, Trans World Airlines, Inc., United Airlines, Inc., United Parcel Service, and USAir, Inc. American Airlines and United Airlines do not join in AIR Conference's Brief.

2 *Texas & N.O. R.R. v. BRAC*, 281 U.S. 548, 569 (1930).

3 *General Comm. v. Missouri-K-T R.R.*, 320 U.S. 323, 333 (1943).

truly the chosen representative of a majority of the employees, as the Court has emphasized:

> "Freedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme. All the proceedings looking to amicable adjustments and to agreements for arbitration of disputes, the entire policy of the act, must depend for success on the uncoerced action of each party through its own representatives to the end that agreements satisfactory to both may be reached and the peace essential to . . . interstate commerce may be maintained. . . . [i]t is of the essence . . . that this liberty should be safeguarded."

General Comm. of Adjustment v. Missouri-K-T R.R., 320 U.S. 323, 329-30 (1943) (quoting *Texas & N.O. R.R. v. BRAC*, 281 U.S. 548, 569 (1930)).

AIR Conference believes that this is particularly true because the RLA places restrictions upon carriers that are not imposed upon other industries, whose labor obligations are established and governed by the National Labor Relations Act ("NLRA"). Some of the more significant differences between the duties imposed by the RLA and the NLRA include:

1. The RLA does not expressly provide for decertification, unlike the NLRA in 29 U.S.C. § 159 (c).[4] Under the NLRA, an employer's good faith doubt of continued majority support based on objective circumstances allows an employer to withdraw recognition. Under the RLA, the only court that has addressed the question has held the

---

4 *See infra* note 16.

NLRA rule does not apply, and that a carrier must bargain with a certified union regardless of objective evidence that it does not have majority support. *Alitalia Airlines v. NMB,* 753 F.2d 3 (2d Cir. 1985).

2. The bargaining obligation imposed upon covered carriers by the RLA is far more extensive in scope than the correlative duty imposed by the NLRA. Under the NLRA, an employer may bargain to impasse with the union and thereupon implement the terms and conditions it has bargained. *NLRB v. Katz,* 369 U.S. 736 (1962). Under the RLA, by contrast, carriers are bound by statute to the status quo throughout lengthy dispute resolution procedures, which may include direct bargaining, mediation by the NMB, a proffer of arbitration by the NMB, a 30-day cooling off period, and a Presidential Emergency Board. The terms of a collective bargaining agreement remain in effect throughout these "almost interminable"[5] procedures, often for years after the agreement's expiration date.

3. A union governed by the RLA not only is free to strike, but also may engage in secondary boycotts that seriously disrupt interstate commerce generally, as well as the specific operation of the struck carrier. *Burlington Northern R.R. v. BMWE,* 481 U.S. 429 (1987). Airline and railroad operations are particularly vulnerable to secondary boycotts. Because of their far-flung operations, carriers enter into numerous agreements with other carriers to provide needed services (e.g. maintenance, baggage handling, or ticketing at distant stations, railroad interchange agreements). A union can wreak economic damage upon the primary carrier by its

---

5 *Detroit & Toledo S.L. R.R. v. UTU,* 396 U.S. 142, 149 (1969).

attack upon other carriers that provide such supportive services.

For these reasons, it is even more essential that the NMB's certification of a union rest upon the desires of a majority of the employees. Absent the consent of the governed, employee disaffection will lead to unnecessary workplace disruption and labor disputes, frustrating the regime created by Congress under the RLA.

This case provides a classic example of the practical implications of the bedrock majority representation principle. In this case, the NMB transferred a certification from the Union of Flight Attendants ("UFA") to the International Association of Machinists and Aerospace Workers ("IAM") without any attempt to determine whether a majority of the employees desired IAM representation.

This change of representation is of great significance for both the employees and the carrier. In contrast to the UFA, an independent union that represented employees only at Continental and Continental/Air Micronesia (a separate division of Continental which is separately certified by the NMB), an international union like the IAM is likely to have interests that reach beyond the confines of the particular carrier. The IAM is well known for "pattern bargaining" whereby it insists that each carrier agree to terms no less favorable than those achieved at other carriers, ratcheting up wages and working conditions throughout the entire industry. Such pattern bargaining can foster intransigent bargaining positions if the union pays less attention to unique factors or economic necessities at a particular carrier than to the interests of union members elsewhere.

The NMB's decision here to allow transfer of a certification without even examining whether the new union has any support among the employees creates the potential for a "market" in certifications. Nearly defunct unions like UFA

(that lost support in an unsuccessful strike) may be taken over by large international unions that assume the waning union's operating expenses and pay its salaries. Under the NMB's policy announced in this case, the Board will transfer certifications in such circumstances without examining whether the new union is an entirely different bargaining entity than the old union, with an entirely different relationship to the employees whom it ostensibly represents, and whether the employees desire to be represented by the new union.[6] Once the transfer of certification is effected, the employees have no ready mechanism to rid themselves of the new union.

Accordingly, the members of AIR Conference have an interest in ensuring that the NMB fulfills its statutory duty to investigate the wishes of employees in all representation disputes, including those that entail transfer of certification from one union to another. The NMB's decision in this case to transfer two certifications without regard to the employees' choice is a perversion of the statutory scheme. It is critical that the Board be directed to certify only a union that is in fact the choice of a majority of employees.

ARGUMENT

In *Switchmen's Union v. National Mediation Board*, 320 U.S. 297 (1943), the Court held that a decision of the

---

6 In *NLRB v. Financial Institution Employees Local 1182*, 475 U.S. 192 (1986), the Court viewed union mergers as internal matters outside the jurisdiction of the NLRB *only* if they did not entail a question concerning representation. Under the NLRA, a question concerning representation is present if there is discontinuity in the rights and obligations between the union's leadership and membership, as shown by such factors as whether the two have the same officers, internal organization, dues structures, and whether employees have the same voice in decisions such as approval of collective bargaining agreements, and calling strikes. In this case, the NMB has agreed that the transfer of certification from UFA to IAM created a representation dispute subject to section 2, Ninth of the RLA.

NMB concerning the appropriate grouping of employees[7] for representation purposes was not subject to judicial review, principally because the RLA provides for review in certain sections but is silent as to judicial review of NMB decisions concerning jurisdictional disputes under section 2, Ninth.[8] Subsequent courts have interpreted *Switchmen's* broadly to bar review of virtually all NMB representation decisions.

Courts have expanded the reach of *Switchmen's* even though the judicial attitude that led to the *Switchmen's* decision has changed markedly. Since passage of the Administrative Procedure Act, the sustained effort of administrative law has been to "continuously narrow[] the category of actions considered to be so discretionary as to be exempted from review." Martin Shapiro, *Administrative Discretion: The Next Stage*, 92 Yale L.J. 1487, 1489 n.11 (1983). Due to the broad presumption in favor of judicial review that now exists in American jurisprudence, the Court

---

7 One rationale why judicial review was not available was that Congress could not have intended this particular "explosive problem," 320 U.S. at 303, to be "drag[ged]. . . into other tribunals of law," *id.* at 305. The legislative history used to support this point refers only to jurisdictional disputes between unions at issue in *Switchmen's*, not to *all* representation questions under section 2, Ninth.

8 "[T]he danger of relying on inference was exemplified precisely in the *Switchmen's* case, in which the materials for inference were negligible and the result reflected a judicial rather than a legislative attitude." Louis L. Jaffe, *The Right to Judicial Review II*, 71 Harv. L. Rev. 769, 791 (1958). Today, it no longer would be permissible to infer that Congress meant to preclude review simply because Congress did not specifically provide for review:

> the rule is that the cause of action for review of such action is available absent some clear and convincing evidence of legislative intention to preclude review.

Japan Whaling Ass'n v. American Cetacean Society, 478 U.S. 221, 231 n.4 (1986).

should reconsider *Switchmen's*. At the very least, the Court should clarify whether *Switchmen's* properly is being used by the lower courts to bar judicial review in virtually all representation matters, even those which implicate the fundamental rule of majority choice.

Judicial review has become the presumption because it helps to prevent arbitrary and capricious agency action, ensures that questions of law are decided correctly, and forces agencies to articulate the rationale for their decisions, thus providing guidance for the parties subject to agency action. The NMB, without the benefit of judicial oversight for the last 50 years, has often fallen into the very patterns that judicial review is meant to curb.

This case provides a classic example. The NMB certified a transfer of union representation rights pursuant to a union-conducted merger election vote held six and one-half years before the Board's decision. The Board repeatedly admitted that the transfer of the certificate constituted a "representation dispute" covered by section 2, Ninth. Contrary to the explicit provisions of section 2, Ninth, however, it did not "designate who may participate in the election and establish the rules to govern the election"; neither did it "appoint a committee of three neutral persons" to perform these statutory requirements. 45 U.S.C. § 152, Ninth. Indeed, the NMB admittedly took no action at all to investigate or ascertain the "basic facts"[9] that must underlie any certification, namely, who are the employees and what is their choice. The NMB merely deferred to an outdated election conducted by the interested parties, thus allowing the fox to watch the hen-house.

---

9 The Court in *Virginian Railway v. System Federation No. 40*, 300 U.S. 515, 562 (1937), laid out the "basic facts" upon which a union certification rests under section 2, Ninth: "[T]he number of eligible voters, the number participating in the election and the choice of the majority of those who participate."

Instead of fulfilling its statutory duties, the Board asserted that it had not only "the unfettered discretion to determine *how* to ascertain employee preference" but also "the power to decide *whether* to ascertain employee wishes at all."[10] The NMB stated five times in its brief to the Court of Appeals[11] that the Board was entitled to "presume" that the union and its officers could speak for the bargaining unit on the issue whether it was their representative. This reasoning, which assigns to the interested unions the very issue that the Board is charged with independently investigating, clearly misinterprets the statutory scheme.[12]

This case is not an isolated instance of the NMB's cavalier attitude towards its statutory duty to ascertain the wishes of affected employees.[13] In *IAM v. Trans World*

---

10 NMB Reply to Plaintiffs' Opposition to Defendant's Motion to Dismiss or for Summary Judgment at 11, *Continental Air Lines v. NMB*, No. 91-796 (D.D.C.) (Reply filed May 22, 1991).

11 Brief For The National Mediation Board at 18, 36 n.25, 37, 40, and 45, *Continental Air Lines v. NMB*, 957 F.2d 911 (D.C. Cir. 1992) (No. 91-5189).

12 The Board's error in relying on a union-conducted election to ensure the employees' choice is particularly apparent in the case of the Continental/Air Micronesia flight attendants. Only 33 of 59 received a ballot and the union kept no separate record whether any of them actually voted.

13 In *USAir v. NMB*, 711 F. Supp. 285, 293 (E.D. Va.), *aff'd mem.*, 894 F.2d 403 (4th Cir 1989), the court expressed concern that the NMB did not investigate allegations of union interference in an election, but felt constrained by *Switchmen's* to withhold judicial review. In *Professional Cabin Crew Ass'n v. NMB*, 872 F.2d 456 (D.C. Cir.), *cert. denied*, 493 U.S. 974 (1989), the NMB refused to investigate whether individuals whose names were on a recall list, but who had not worked for more than a year after they went on strike, were still employees entitled to vote under the Act, or whether they had obtained employment elsewhere so as to be ineligible even by the NMB's own criteria. In *IAM v. Trans World*

(continued...)

Airlines, Inc., 839 F.2d 809, 812 and n.1 (D.C. Cir.), *cert. denied*, 488 U.S. 820 (1988), the NMB asserted that the RLA does not require it to be neutral on representation issues.[14] This position is illustrative of the attitude that can develop without judicial oversight.

The Board's action in this case not only disregarded the governing statute and the bedrock principle of employee free choice; it also reflected an abrupt about-face in NMB policy.[15] While the Board claimed its policy of non-

---

13 (...continued)
Airlines, Inc., 839 F.2d 809, 811 (D.C. Cir.), *cert. denied*, 488 U.S. 820 (1988), the NMB excluded from the election a block of employees temporarily working in another craft to help in a strike, in contravention of the Board's own rules. The court deemed the carrier's argument "appealing" but stated it was without power to grant relief under *Switchmen's*. Indeed, the NMB repeatedly states it is not bound to follow its own regulations or its published Representation Manual, and the courts nevertheless have considered that they are without jurisdiction per *Switchmen's*. *Air Canada v. NMB*, 478 F. Supp. 615 (S.D.N.Y. 1979), *aff'd mem.*, 659 F.2d 1057 (2d Cir.), *cert. denied*, 454 U.S. 965 (1981) (NMB's published rules on timeliness of authorization cards need not be strictly adhered to); *Hawaiian Airlines v. NMB*, 107 L.R.R.M. (BNA) 3322 (D. Hawaii 1979), *aff'd mem.*, 659 F.2d 1088 (9th Cir.), *opinion replaced*, 109 L.R.R.M. (BNA) 2936 (9th Cir. 1981), *cert. denied*, 456 U.S. 929 (1982) (NMB Representation Manual not binding on Board).

14 The NMB's position is stated in the Brief of Defendant-Appellee National Mediation Board at 22-24 and n.9, filed by the Department of Justice on December 4, 1987, in *IAM v. Trans World Airlines* (D.C. Cir. No. 87-5092).

15 Previously, in cases where one union affiliated or merged with another, the NMB consistently refused to certify the new union without itself investigating whether a majority of the employees actually chose the new union as their representative. For example, when members of the Air Transport Mechanics Union at Continental voted to affiliate with the IAM, the "Board refused to transfer the certification on the basis of a private election." *Continental Airlines, Inc.*, 8 N.M.B. Supp. A 709, 713 (1977). *Accord Pocono Airlines*, 9 N.M.B. 173 (1982); *Ross Aviation*, 9 N.M.B. 162 (1982); *Ozark Air Lines, Inc.*, 6 N.M.B. 473 (1978); *North Central*
(continued...)

investigation was its established practice, in fact it was a new approach adopted without any citation to prior practice or precedent or expression of any rationale for the change. Such unexplained changes in NMB policy are not infrequent, but generally have been found unreviewable.[16] *See generally* Herbert P. Northrup, *The Railway Labor Act--Time For Repeal?*, 13 Harv. J. L. & Pub. Pol'y 441, 482, 501 (1990)

---

15 (...continued)
162 (1982); *Ozark Air Lines, Inc.*, 6 N.M.B. 473 (1978); *North Central Airlines*, 6 N.M.B. 612 (1978); *Texas International Airlines*, 5 N.M.B. 196 (1976); *see also Pennsylvania R.R.*, 2 N.M.B. 204 (1951).

16 The NMB has totally reversed itself on the showing of interest a union must make before obtaining an investigation of the status of related air carriers. *Compare Transamerica Airlines*, 12 N.M.B. 204 (1985), *with Eastern Air Lines/Continental Airlines*, 17 N.M.B. 432, 436 (1990). The NMB frequently has applied diametrically opposed policies on whether to impound ballots if a party files a challenge to some aspect of the election, and never has explained this divergence. *Compare Denver & R.G. W. R.R.*, 12 N.M.B. 303 (1985) (impounding ballots), *and Altair Airlines*, 7 N.M.B. 449 (1980) (same), *with USAir*, 8 N.M.B. 131 (1980) ("[i]n accordance with the Board's *normal procedure*, ballot in this election will be counted as scheduled. Following the count, the Board will determine what action is appropriate with respect to the issues raised in your protest" (emphasis added)), *and USAir*, 17 N.M.B. 377, 378 (1990) (request to delay ballot count called "extraordinary"). The NMB has reversed itself several times on allowing "strawman" elections by individuals who sought to replace a certified union. *See generally* Thomas P. Murphy, *Deunionization in the Airline and Railroad Industries: The Need for Legislative Reform*, 35 Fed. B. News & J. 142, (March/April 1988) (criticizing NMB stance on decertification). *Compare Air France*, 6 N.M.B. 238, 6 N.M.B. 259 (1977) (individual wins election among dispatchers and immediately disclaims representation rights), *with Manufacturers Ry.*, 7 N.M.B. 451, 7 N.M.B. 485 (1980) (Board refuses to allow strawman decertification attempt), *and Chicago Union Station Co.*, 8 N.M.B. 141 (1980) (same), *and Atcheson, Topeka & Santa Fe Ry.*, 8 N.M.B. 66, 8 N.M.B. 81 (1980), 8 N.M.B. 469 (1981) (same). Following *Russell v. NMB*, 714 F.2d 1332 (5th Cir. 1983), *cert. denied*, 467 U.S. 1204 (1984), where the Fifth Circuit held employees had a right to become non-union, the Board refused to create a procedure for decertification, but began once again to allow strawman elections. *In re Chamber of Commerce*, 14 N.M.B. 347 (1987).

(criticizing NMB's inconsistency and failure to follow own rules; "[a] basic reason that the NMB can continue to operate with so many procedural shortcomings in the representation area is that the Supreme Court has severely restricted judicial review. . . . [i]n *Switchmen's* . . . .")

Judicial review would greatly improve representation proceedings under the RLA, for "[t]he special competence of the National Mediation Board lies in the field of labor relations rather than in that of statutory construction." *Switchmen's*, 320 U.S. at 321 (Reed, J., dissenting). Judicial review would not only protect the bedrock principle of employee freedom of choice, it would also lead to better informed and articulated NMB decisions, which in turn would provide guidance to the parties subject to NMB authority. It would control arbitrary and capricious NMB action, a curb sorely needed after 50 years without judicial oversight.

CONCLUSION

The petition for a writ of certiorari should be granted, to assess the continued viability and application of *Switchmen's Union*, and to insure integrity in the administration of the Railway Labor Act.

Respectfully submitted

Robert J. DeLucia
Airline Industrial Relations
Conference
1920 N Street, N.W.
Washington, D.C. 20036
(202) 861-7552
For Amicus Curiae
The Airline Industrial
Relations Conference

July 15, 1992